

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW  
265 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:  
(617) 951-1354  
(617) 951-0586

November 19, 2004

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

Re: Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company, NSTAR Gas Company, d/b/a NSTAR, D.T.E. 03-47-B(Phase II)

Dear Ms. Cottrell:

Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth"), Boston Edison Company ("Boston Edison") and NSTAR Gas Company (together, "NSTAR" or the "Company") hereby reply to the Attorney General's motions to delay the procedural schedule and to compel further answers to information requests (the "Attorney General's Motion"), which were filed on November 17, 2004. As discussed below, the Attorney General's Motion is without merit and should be denied by the Department.

The Attorney General first argues that the Company should have filed its response to Information Request AG-1-4 (Phase II) by November 5, 2004, or ten working days after it was issued on October 22, 2004 (Attorney General's Motion at 2). The Attorney General claims that when a procedural schedule is silent concerning when a party should file discovery responses, the Department requires a ten working-day response time (*id.*). Thus, the Attorney General seeks a delay based on the fact that the Company's response was filed after November 5, 2004, beyond the alleged 10-day "requirement" of the Department.

The Attorney General's claim has no basis in fact or law. Specifically, the Department's regulations state that the Hearing Officer will "exercise his or her discretion to balance the interests of the parties and ensure that the information necessary to complete the record is produced without unproductive delays." 220 C.M.R. 1.06 (6)(c)(2). At the procedural conference conducted at the Department's offices on October 22, 2004, the Hearing Officer exercised the discretion accorded to her by the Department's rules of procedure and established a deadline for discovery of November 15, 2004. See, Tr. 1, at 5 ("[t]he [C]ompany will respond to all discovery by November 15<sup>th</sup>"). The Hearing Officer did not impose any specific time interval between the receipt of a discovery question and the delivery of a response. In accordance with this schedule, the Company filed 11 of 31

responses on November 8, 2004 and 9 additional responses on November 12, 2004. The remaining 12 responses were filed on November 15, 2004. Thus, the Company responded to the Attorney General's discovery in a fair and timely manner consistent with the deadline established by the Hearing Officer. Accordingly, there is no reasonable basis to extend the previously established procedural schedule in this case.

The Attorney General further contends that the Company's response to Information Request AG-1-4 (Phase II) does not disaggregate the pension assets and liabilities by business segment, as "required" by Fitchburg Gas & Electric Light Company, D.T.E. 04-48, at 22 (2004) (Attorney General Motion at 2). This is a clear misstatement of the Department's directive in D.T.E. 04-48. In D.T.E. 04-48, the Department directed Fitchburg to "allocate its pension and PBOP expenses between the transmission and distribution function." D.T.E. 04-48, at 22 (emphasis added). The Department did not require Fitchburg to "disaggregate pension assets and liabilities" as claimed by the Attorney General.

Moreover, in its response to Information Request AG-1-4 (and prior responses in the earlier phase of this proceeding), the Company included an allocation of pension and PBOP expense to each of the operating subsidiaries of NSTAR, consistent with the Department's directive in D.T.E. 04-48. This information was provided to the Attorney General in response to Information Request DTE-1-2 in D.T.E. 03-47 on May 16, 2003, and was updated in this case for the actual 2003 amounts.<sup>1</sup> Page 6 of Attachment AG-1-4 provides a breakdown of the pension and PBOP amounts consistent with the distribution and transmission rates for the electric companies for 2003. The Company provided all other information sought by the Attorney General in the request (AG-1-4). Accordingly, the Company's response to Information Request AG-1-4 is fully responsive and complete. There is no further information that the Company can provide on this point, and therefore, the Attorney General's motion to compel should be denied.

The Attorney General further charges that the Company's response to Information Request AG-1-28 (Phase II)<sup>2</sup> failed to provide any documents to support NSTAR's need for an order from the Department in this case by January 15, 2005 (Attorney General's Motion at 2, fn. 2). The Company provided a timely and complete response to Information Request AG-1-28, indicating that a Department decision by January 15, 2005 will enable the Company's management to provide conclusive evidence to its independent accountants, PricewaterhouseCoopers ("PwC"), that the implementation of the Company's pension/PBOP mechanism will permit the Company to recover its pension/PBOP-related regulatory assets. The Company closes its accounting books on or about January 15, 2004, and a Department order by this date will eliminate the uncertainty that would otherwise arise in the course of

---

<sup>1</sup> As stated in the response to AG-1-4, the Pension Adjustment Factor ("PAF") filed in December 2003 was based on estimated 2003 results.

<sup>2</sup> In a follow-up email, dated November 18, 2004, the Attorney General, corrected his earlier reference from Information Request AG-1-27 to Information Request AG-1-28.

PwC's audit of the Company. The continuing presence of such uncertainty could adversely affect the Company's customers.

In sum, the Company has satisfied the Attorney General's discovery requests in this case in a timely and complete manner, consistent with the procedural deadlines previously established by the Hearing Officer. The Attorney General has not stated a single valid basis for the delay of these proceedings, nor has the Company failed to produce a complete response to all discovery questions posed by the Department and the Attorney General in this proceeding. Accordingly, the Attorney General's motions to extend the schedule and to compel an additional discovery response should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert J. Keegan". The signature is written in dark ink and is positioned above the printed name.

Robert J. Keegan

cc: Caroline Bulger, Hearing Officer  
Alex Cochis, Assistant Attorney General